

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP.
IMPLANTABLE DEFIBRILLATORS
PRODUCTS LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to:

Civil No. 06-88 (DWF/AJB)

Fred J. Stauder, individually and on
behalf of similarly situated persons; and
Marilyn Stauder,

Plaintiffs,

v.

Guidant Corporation; Cardiac Pacemakers,
Inc.; and Guidant Sales Corporation,

Defendants.

ORDER

Christopher J. Hickey, Esq., Brent Coon & Associates; Kevin E. McDermott, Esq.,
Kevin E. McDermott Co, LPA; and Steven M. Weiss, Esq., Law Offices of Steven M.
Weiss, counsel for Plaintiffs.

Anne M. Klepach, Esq., and Craig A. Marvinney, Esq., Ulmer & Berne; Timothy A.
Pratt, Esq., Deborah A. Moeller, Esq., and Jeffrey S. Nelson, Shook Hardy & Bacon
LLP; and Joseph M. Price, Esq., Faegre & Benson LLP, counsel for Defendants.

This matter is before the Court pursuant to a motion to dismiss brought by
Defendants Guidant Corporation, Cardiac Pacemakers, Inc., and Guidant Sales
Corporation (collectively, “Guidant”) requesting that that the Court dismiss Plaintiffs
Fred J. Stauder and Marilyn Stauder’s (“Plaintiffs”) Complaint for failure to provide a

Plaintiff Fact Sheet as required by this Court's Pretrial Order No. 5. For the reasons set forth below, Guidant's motion is conditionally denied.

Background

Plaintiffs' deadline to submit a Plaintiff Fact Sheet was March 3, 2006. Plaintiffs admit that they were two months late in submitting their Plaintiff Fact Sheet. Yet Plaintiffs assert that they had received no previous notice of delinquency and that they submitted the Plaintiff Fact Sheet just one day after receiving electronic service of Guidant's motion to dismiss. Moreover, Plaintiffs assert that Guidant suffered no prejudice as a result of Plaintiffs' delay in submitting the Plaintiff Fact Sheet.

Guidant, on the other hand, contends that Plaintiffs' tardiness in submitting the Plaintiff Fact Sheet was prejudicial and inexcusable. Guidant asserts that Plaintiffs also failed to provide an authorization for the release of medical records that complies with Pretrial Orders No. 2 and 9, in that the authorization that Plaintiffs provided executed the wrong form, excluded psychiatric and psychological records, and provided that records were to be released to Plaintiffs' counsel rather than to Guidant.

The Court has considered the parties' arguments and the submissions of counsel. On one hand, the Court understands the predicament that Guidant faces when Plaintiffs may have not complied with a pretrial order because of a failure of communication between Plaintiffs' counsel and the Plaintiffs' Steering Committee. Yet, an outright dismissal after Plaintiffs have actually submitted the Plaintiff Fact Sheet seems too harsh a penalty for the Court to impose at this stage. As a result, the Court will allow Plaintiffs

to continue with their suit, with the forewarning that if Plaintiffs continue to disregard the Court's orders, the Court will act quickly to dismiss Plaintiffs' Complaint and impose sanctions, if necessary.

ORDER

1. Defendants' Motion to Dismiss Plaintiffs Fred J. Stauder and Marilyn Stauder's Complaint for Failure to Comply with this Court's January 31, 2006 Order (Civ. No. 06-88, Doc. No. 3) is conditionally **DENIED**.

2. By no later than August 1, 2006, Plaintiffs Fred and Marilyn Stauder are ordered to provide Guidant with a medical authorization form that allows for disclosure of psychiatric and psychological records and that provides that records are to be released to Defendants.

3. If Plaintiffs fail to comply with this Order, the Court will dismiss Plaintiffs' Complaint without further argument. The Court will also reserve the right to impose sanctions of \$1,000.00 on Plaintiffs' counsel pursuant to Fed. R. Civ. P. 37(b)(2)(C).

Dated: July 24, 2006

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court